HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1126 OF 2003.

Vasant Dhondiba Dhadke. ..Petitioner.

Versus.

Chandradaya Co-operative
Hsg. Society Ltd & Anr. ..Respondents.

Shri. L. B. Patne for the Petitioner.

Shri. Subhash Dhadge for the respondent no.2.

CORAM: S.B.MHASE, J.

DATE : MARCH 13, 2006.

P.C.

1. Heard. It is not disputed that the corner flats were to be given to a member who pays Rs.10,000/- prior to the prescribed date, i.e., 25.11.1977. It is the claim of the petitioner that his father paid amount within the stipulated time and that the payment made by the petitioner's father was earlier in point of time. Therefore, petitioner's father had priority claim in respect of flat No. 13/1.

2. It has transpired in evidence petitioner's father paid amount of Rs.10,000/- on 19.2.1978 and Rs.55,000/- were paid later on. As against that, the respondent no.2 had made the payment

in January 1977 and for that purpose not only the respondent no.2 but the Treasurer of the society has also deposed. It is pertinent to note that the petitioner has not produced the receipt in respect of the payment being made on the specified date, that would have given an opportunity to find out the order of payment. For the reasons best known to the petitioner, the petitioner has failed to produce the receipt in respect of payment.

3. Above all, the treasurer of the society was in witness box but the petitioner has not cross examined him and/or called upon the treasurer to produce the receipt in respect of the payment being made by the petitioner's father. Ultimately, the evidence which is crystalised and proved on record of the courts below was to the effect that the respondent no.2 made the payment in January 1977 as against that the petitioner's father had made payment in February 1978. Therefore, prior claim of the respondent no.2 is eloquently established. Considering this, Courts below have decided the dispute rightly. There is no merit in the case. Petition is rejected in limine.

(S.B.MHASE, J.)